[DO NOT PUBLISH]

IN THE UNITED STATES COURT OF APPEALS

FOR THE ELEVENTH CIRCUIT

No. 17-14299
Non-Argument Calendar

D.C. Docket No. 3:16-cv-00119-TCB

WILLIAM D. DOWNING,

Plaintiff-Appellant,

versus

FIDELITY NATIONAL TITLE INSURANCE COMPANY, et al.,

Defendants- Appellees.

Appeal from the United States District Court
for the Northern District of Georgia

(April 12, 2018)

Before WILLIAM PRYOR, NEWSOM, and ANDERSON, Circuit Judges.

PER CURIAM:

Plaintiff William Downing appeals from the district court's order granting the defendant insurance companies' motion to dismiss. Even when viewing the

facts in the light most favorable to Downing,[1] we hold that he failed to state a claim upon which relief can be granted. We affirm.

I

Title insurers sometimes offer discounts to a title-insurance purchaser when an existing policy already covers the title that he seeks to insure. This type of discount is known as a "reissue credit." Plaintiff alleges that, beginning in 2009, Defendants "conspired to defraud consumers into paying higher prices through a campaign of continuing misrepresentations to their agents that title insurers were required by law to charge their published prices," and that Defendants "used this scheme to eliminate discounts generally and eliminate reissue credits specifically." Plaintiff argues that, but for Defendants' alleged scheme, he would have "received a discount, *i.e.* a reissue credit, and paid a lower net price on his purchase of title insurance on or about May 25, 2012."

Plaintiff maintains that the following communications between Defendants and their individual agents "create[d] the false impression that title insurers were required by law to charge list prices," and thus provide evidence of a scheme to dismantle the reissue credit:

[1] When reviewing a grant of a motion to dismiss, we "accept[] the allegations in the complaint as true and construe[] them in the light most favorable to the plaintiff." *Belanger v. Salvation Army*, 556 F.3d 1153, 1155 (11th Cir. 2009).

> "In accordance with instructions from the Georgia Insurance Commissioner, these charges have been filed with the Department of Insurance and are those that must be charged to the consumer."
>
> "[I]t is our present understanding that the Georgia Department of Insurance requires that the rates Old Republic National Title Insurance Company has published to you are the rates you must charge."
>
> "In accordance with the Georgia Department of Insurance's instructions . . ." "[t]hese rates are published and are the rates that you are required to charge and upon which you are required to remit in accordance with O.C.G.A. § 33-6-5(6)(B)(i)."
>
> "In accordance with the Georgia Department of Insurance's instructions . . ." "these published rates are the rates that you are required to charge and on which your remittance must be made in accordance with O.C.G.A. § 33-6-5(6)(B)(i)."
>
> "In accordance with the Georgia Department of Insurance's instructions . . ." "these published rates are the rates that you are required to charge and on which your remittance must be made."

Plaintiff brings two claims against Defendants, both of which allege violations of Georgia's RICO Act. Plaintiff first claims that Defendants violated O.C.G.A. § 16-14-4(a), under which it is "unlawful for any person, through a pattern of racketeering activity or proceeds derived therefrom, to acquire or maintain, directly or indirectly, any interest in or control of any enterprise, real property, or personal property of any nature, including money." Plaintiff next argues that Defendants "have conspired and endeavored" to violate the above provisions, thereby transgressing subsection (c) of the same statute. Importantly,

Plaintiff does *not* allege in his Complaint that Defendants engaged in price-fixing, despite seeming to implicitly (and, at times, explicitly) rely on a price-fixing theory in his original complaint and on appeal.

II

After Plaintiff filed his Complaint, the district court issued an order granting Defendants' motion to dismiss for failure to state a claim. The court granted Defendants' motion on two separate grounds. First, the court held that "the alleged misrepresentations are misrepresentations of law that are not actionable." Dist. Ct. Op. 21. Second, the court held that, "even if the [alleged] misrepresentations of law were actionable," Plaintiff's claim would still fail because none of the alleged misrepresentations could have constituted the proximate cause of Plaintiff's alleged injury. *Id.* at 24.

Plaintiff timely appealed to this Court.

III

A

Plaintiff alleges that, in order to eliminate reissue credits, Defendants falsely represented to their agents that the Georgia Department of Insurance required title insurers to charge their full "list" prices. "[T]he well-settled meaning of 'fraud' require[s] a misrepresentation or concealment of material fact." *Neder v. United States*, 527 U.S. 1, 22, (1999) (emphasis omitted); *see also McDaniel v. Elliott*,

497 S.E.2d 786, 788 (1998) ("The tort of fraud is defined in Georgia law as the willful misrepresentation of a material fact, made to induce another to act, upon which such person acts to his injury.") (citing O.C.G.A. § 51–6–2(a)). We note at the outset that it does not seem that Defendants' communications constitute any sort of misrepresentation. Rather, Defendants appear to have explained just what Georgia law requires—*i.e.*, that "[t]he premiums and charges for insurance" that agents may offer "shall not be in excess of or less than those specified in the policy and as fixed by the insurer." O.C.G.A. § 33-6-5(6)(B)(i).

But even if Defendants' communications did contain misrepresentations, Plaintiff's argument nevertheless founders. "The general rule is well settled that fraud cannot be predicated upon misrepresentations of law or misrepresentations as to matters of law," *Thomas v. Byrd*, 129 S.E.2d 566, 567–68 (1963), "[a]nd this is especially so where there is no confidential relation between the parties," *Swofford v. Glaze*, 63 S.E.2d 342, 344 (1951). "[W]here the truth of the representations would depend upon the legal effect of the policy provisions, then the alleged misrepresentations were misrepresentations of law." *Marett Properties, Inc. v. Prudential Ins. Co. of Am.*, 307 S.E.2d 69, 72 (1983). Here, the communications' material content is self-evidently legal, and their veracity "depend[s] upon the legal

effect of the policy provisions." Thus, under Georgia law, the communications do not give rise to a claim of fraud.[2]

B

Although Plaintiff insists in response that "Defendants are liable for all misstatements of fact or law . . . because they had a fiduciary relationship with their agents," Reply Br. at 20, the argument is ultimately moot because Plaintiff failed to show that any alleged misrepresentation—factual or legal—proximately caused his alleged injury. "When a court evaluates a RICO claim for proximate causation, the central question it must ask is whether the alleged violation led directly to the plaintiff's injuries." *Anza v. Ideal Steel Supply Corp.*, 547 U.S. 451, 461 (2006). Here, Plaintiff cannot answer this "central question" in the affirmative.

As explained above, Plaintiff does not allege that Defendants set the price of insurance illegally, only that Defendants' allegedly fraudulent communications regarding insurance pricing worked to deprive Plaintiff of a reissue credit. But Defendants' actual price-setting decisions occurred well upstream of their communications with their agents, and (as Defendants explained in those

[2] Plaintiff insists that when Defendants referred to the Georgia Department of Insurance's "instructions" they were in effect stating that "the Department of Insurance instructed them to charge their list prices for title insurance"—a factual claim—and that "[t]hose events never took place," ergo fraud. Br. of Appellant at 9. We reject Plaintiff's attempt to recharacterize the inherently legal substance of Defendants' communications.

communications) Georgia law *requires* agents to charge whatever premium prices their insurers set. S*ee* O.C.G.A. § 33-6-5(6)(B)(i). Thus, even if we were to accept Plaintiff's argument and hold that Defendants defrauded their agents, the alleged misrepresentation would be of no consequence; the Georgia law requiring that agents charge whatever prices their insurers set is agnostic to the insurer's rationale or motivation. As the district court put it: "Once Defendants decided to eliminate reissue credits, there was no room for their agents to rely on any representations (false or otherwise) about the reasons for doing so. The agents had to charge the premiums set by Defendants. They did just that." Dist. Ct. Op. at 27.

IV

For the foregoing reasons, we **AFFIRM** the district court's judgment.